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JAMES D. MAHER,
CLERK.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1918.

No. 1[redacted]101

THE COCA-COLA COMPANY,
Petitioner,

vs.

THE KOKE COMPANY OF AMERICA,
THE SOUTHERN KOKE COMPANY, Ltd.,
THE KOKE COMPANY OF TEXAS,
THE KOKE COMPANY OF OKLAHOMA,
THE KOKE COMPANY OF ARKANSAS,
Respondents.

Petition for Certiorari to the Circuit Court of Appeals Ninth Circuit.

BRIEF FOR RESPONDENTS.

RICHARD E. SLOAN,
Solicitor for Respondents.
LITTLETON, LITTLETON & LITTLETON,
Of Counsel.

ARIZONA REPUBLICAN, PHOENIX

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THE KOKE COMPANY OF AMERICA,
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THE KOKE COMPANY OF TEXAS,
THE KOKE COMPANY OF OKLAHOMA,
THE KOKE COMPANY OF ARKANSAS,

Respondents.

BRIEF FOR RESPONDENTS.

The Respondents in the above entitled cause respectfully present for the consideration of this Honorable Court the following brief in answer to the brief filed by petitioner in support of the application for the writ of certiorari.

I.

The decision of the Circuit Court of Appeals for the Ninth Circuit does not conflict with the decisions of other Circuit Courts of Appeals and there is, therefore, no necessity for its review in the interest of uniformity of decision.

In none of the cases cited by petitioner does it appear that any Circuit Court of Appeals has stated any proposition of law or made any findings of fact which conflict with the decision in this case except the Circuit Court of Appeals for the Sixth Circuit in the case of Coca-Cola Co. vs. Nashville Syrup Co. 215 Fed. 527. That case was decided on the same day, by the same court, and the opinion written by the same judge, as that of the case of U. S. vs. Coca-Cola Co., 215 Fed. 535. To the extent that either of these cases may be said to conflict with the decision in this case, they are not to be distinguished; on the contrary they should be read together in order that the view of the Circuit Court of Appeals for the Sixth Circuit may be understood. Upon appeal taken from the judgment rendered in U. S. vs. Coca-Cola Co., this Court reversed the Circuit Court of Appeals for the Sixth Circuit.

U. S. vs. Coca-Cola Co., 241 U. S. 265.

In the decision this Court disapproved of the reasoning not only in the Coca-Cola case but also in the Nashville Syrup Company case in those particulars in which either may be said to conflict with the decision of the Circuit Court of Appeals for the Ninth Circuit. In the first place, in the Nashville Syrup Company case, it was assumed that the name Coca-Cola was not originally so descriptive as to indicate to the public that the product was derived from Coca leaves and Cola nuts, for the reason that when the name was adopted the public had little or no knowledge as to the qualities of either Coca leaves or Cola nuts. In considering the same point in the Coca-Cola case, this Court said:

> "Nor would it be controlling that at the time of the adoption of the name, the Coca plant was known only to foreigners and scientists, for if the name had appropriate reference to that plant and the substance derived therefrom, its use would primarily be taken in that sense by those who did know or took pains to inform themselves of its meaning. Mere ignorance on the part of others as to the definition would not change the character of the designation."

Again the Circuit Court of Appeals for the Sixth Circuit was of the opinion that while the word Coca and the word Cola might each be descriptive, the combination of the two with nothing to indicate whether the product was "medicine, food or drink," or whether it was intended "to swallow, smoke or chew" was not descriptive in that one who had knowledge of the characteristics of Coca leaves and Cola nuts could only infer that the substance had some connection with these "two foreign things."

In passing upon the same contention made in the Coca-Cola case this Court said:

> "In the present case we are of the opinion that it could not be said as a matter of law that the name was not primarily descriptive of a compound of Coca and Cola ingredients as charged, nor is there a basis for the conclusion that the designation had attained a secondary meaning as the name of a compound from which either Coca or Cola ingredients were known to be absent. Claimant has always insisted and now insists that its product contains both."

It is to be borne in mind that the Nashville Syrup Company case was heard and decided upon affidavits. The evidence bearing upon the question as

to whether petitioner's product can properly be said to be a compound made from Coca leaves and Cola nuts was evidently meager and unsatisfactory. This is evident from the following excerpt from the opinion:

> "The fact is that one of the elements in the composition of the syrup is itself a compound made from Coca leaves and Cola nuts; this element becomes a flavor for the complete syrup and is said to impart to it an aroma and taste characteristic of both. This flavoring element is not in large quantities (less than two per cent) but it is impossible to say that it does not have an appreciable effect upon the compound."

In the present case a large mass of testimony appears in the record upon the precise question as to whether in the product Coca-Cola there is even anything derived from Coca leaves or Cola nuts that imparts any aroma or taste characteristic of either.

After reviewing this evidence the Court held that the use of Coca leaves after cocaine and its associate alkaloids and the waxes and oils contained in the leaves had been removed by an elaborate process which left only an exhausted pulp contributed nothing which could possibly impart flavor or aroma to the product, except perhaps in such infinitesimal quantities as to be negligible. And further that the use of Cola nuts was of no consequence inasmuch as the caffeine, which their use was intended to supply, is for the most part derived from tea leaves.

It is quite evident that the decision of the Nashville Syrup Company case is based upon a misunderstanding regarding the true elements entering into the composition of Coca-Cola syrup and

that this mistake was due to the fact that the question was not, as in this case, made an issue and determined after an exhaustive examination into the facts, but was decided upon affidavits.

The opinion in the Nashville Syrup Company case upon analysis will thus be shown not to be in conflict with the decision in this case with respect to any matter of law but differs from it in the regard that certain inferences and reasoning adopted by the Court in the former case were not followed in the latter case, and as we have seen these inferences and this reasoning in the Nashville Syrup Company case have been disapproved of by this Court in the Coca-Cola case. Insofar, therefore, as the Nashville Syrup Company case is not in harmony with the decision in this case it may no longer be regarded as the law for the Sixth Circuit although technically it may still stand as a final judgment.

II.

The law of the case has been settled.

There is no occasion for a review of the decision in this case in the interest of uniformity of decisions for the reason that the law as declared by the Circuit Court of Appeals for the Ninth Circuit follows the law as declared by this Court in the carefully considered cases of Worden vs. California Fig Syrup Company, 187 U. S. 516, and U. S. vs. Coca-Cola Co., 241 U. S. 265.

Counsel for petitioner, in effect therefore, by this application, request this Honorable Court to reconsider and overrule the decisions in the cases last cited.

III.

The Patent Office proceeding not Res Judicata.

With due respect for counsel for petitioner, we are unable to see in what way the decision of the Commissioner of Patents in the matter of the application of the Koke Company of America for the registration of its trade mark "Koke" is **res adjudicata** of the issues raised and decided in this case or how it affects the application made by petitioner for the issuance of the writ of certiorari.

The case of Hart Steel Company vs. Railroad Supply Co., 244 U. S. 294, and the case of Rock Spring Co. vs. Gaines & Co., 246 U. S. 212., are relied upon by counsel for petitioner as sustaining their contention that the decision of the Commissioner of Patents in the matter referred to was such a final determination of the question decided by the Circuit Court of Appeals as to conclude the latter Court. These cases do not sustain the contention. They related wholly to decisions of Circuit Court of Appeals and the rule of **res adjudicata** was expressly limited in its application therein to cases in which there is an identity of subject matter, an identity of issues, and an identity of parties.

The decision of the Commissioner of Patents was one that related wholly to the right of the Koke Company of America to register as its trade mark the word "Koke," under the provisions of the Act of Congress of February 20, 1905, (33 Stat. L. 725). Under the Act, the jurisdiction of the Commissioner is special and limited. The only question he may decide is whether the trade mark applied for is, under the terms of the Act, entitled to registra-

tion. His determination of that question is only qualifiedly final. As said by the Circuit Court of Appeals for the Sixth Circuit in deciding the case of W. A. Gaines vs. Rock Springs Dis. Co., 226 Fed, 531,

> "We find nothing in the Act purporting to cut off or impair any substance of defense which would have been open to the defendant if there has been no registration except insofar as it perhaps may affect the character of registrant's title to a descriptive word of a secondary meaning."

In his decision the Commissioner of Patents did not assume to decide any other than the one question whether the word "Koke" was sufficiently distinctive to entitle it to registration. At the close of the decision he states,

> "In the case at bar, however, the question is distinctly presented whether one has the right to adopt as the trade mark the popular pseudonym for the goods which he sells. The answer must be in the negative."

See petitioner's brief, page 81.

Under Section 5, of the Trade Mark Act, any one may appear and oppose registration who may believe that he will suffer damage by the registration of the mark applied for. No question of unfair competition between the opposer and the applicant can properly arise. The applicant may not block a hearing of any proper ground of opposition by showing that the opposer is making a wrong use of the trade mark or trade name claimed to be infringed by the one applied for. Unclean hands is

a purely equitable defense available only in suits in equity.

Without considering whether it was properly and in due time brought to the attention of the Circuit Court of Appeals, the decision of the Commissioner of Patents and the order dismissing an appeal therefrom made by the Court of Appeals for the District of Columbia, were properly disregarded as not determinative of the question decided in this case.

IV.

The suggestion of petitioner that the decision in this case should be reviewed in order that the judgment dismissing the bill of complaint may be so modified as to afford petitioner, the Coca-Cola Company, a locus penitentiae is without merit.

The order of the Court dismissing the bill of complaint is not as assumed by counsel for petitioner, in conflict with the law as declared by other Circuit Courts of Appeals but is in entire harmony therewith.

An examination of the cases cited by counsel for petitioner will show affirmatively that the practice of affording a **locus penitentiae** in cases of unfair competition is restricted to those cases in which there is no untruthfulness or deception in the trade mark or trade name of the complainant, but in which it appears that the acts of deception relate wholly to representations apart from and disconnected with the use of such name. In the case of the Diamond Salt Co. vs. Worcester Salt Co., 22[illegible] Fed. 66, and in the case of Gaines & Co. vs. Turner

Looker Co., 204 Fed. 553, this distinction was carefully made.

In the case at bar the Circuit Court of Appeals specifically found that in the use of its trade name or trade mark, Coca-Cola, petitioner was guilty of deception. The Court found that through the use of this deceptive name and by the use of labels on which appeared pictures of Coca leaves and Cola nuts, and by means of advertisements suggesting the presence in the product sold by petitioner of the essential qualities of Coca leaves and of Cola nuts, "a tremendous consumption was built up," and "that large numbers" of petitioner's customers "still consume" this product under said representations.

The Circuit Court of Appeals rightly took the view that inasmuch as the Coca-Cola Company had created the belief that its product contained cocaine derived from Coca leaves and caffeine derived from Cola nuts, and that this belief had been created deliberately by the name adopted for its product and by its advertisements including its labels, and because it continues to sell that product under such name and to use said labels and continues to take advantage of the demand created by such belief although its product had long since ceased to contain cocaine or any of the essential qualities of the Coca leaves, and its caffeine is now derived mainly, if not entirely, from tea leaves, "to be in fact such deceptive, false, fraudulent and unconscionable conduct as precludes a Court of equity from affording it any relief."

The conclusions reached by the Court below followed the holding of this Court in the Syrup of Figs case as appears from the following excerpt:

"That the complainant company years after it had established a popular demand for its product, issued statements in medical journals and news papers, and circulars, that the medical properties of their compound were derived from senna, does not relieve it from the charge of deceit and misrepresentations to the public. * * * * The company by the use of the terms of its so called trade-mark on its bottles, wrappers and cartons, continued to appeal to the consumers out of whose credulity came the profits of their business. And indeed it was the imitation by the defendants of such false and misleading representations that lead to the present suit."

Worden vs. California Fig Syrup Co., supra.

Petitioner's hands remain soiled and have not been made clean in the course of the years. The Court below did not, as suggested by counsel for petitioner in their behalf, deny relief on account of "a condition of things which existed, if at all, many years before the bill was filed, and non-existent for many years," but on the contrary, refused relief upon the ground that the deception found to have been practiced by petitioner has not been abandoned but still continues.

V.

Facts found by the Court below sustained by the Record.

Counsel for petitioner complain that the record does not sustain the Court below in its findings of fact, and it is suggested by way of an expression of belief, that the Court may have considered incompetent evidence in determining the facts.

Petitioner's belief that the Court may have based in part its findings upon incompetent evidence, if any appeared in the record, is certainly not to be regarded as a valid objection to the findings. It will be presumed in the absence of clear showing to the contrary that the Court below disregarded incompetent evidence in the record if there be any. It is not suggested that there is not in the record competent evidence to sustain each of the findings made. Indeed such claim could not be made and sustained.

The record does not admit of any honest doubt as to the truth of the findings with regard to the origin and use by petitioner of its trade name, the representations at one time made as to the medicinal qualities of its product, and that these were derived from Coca leaves and Cola nuts.

On the question as to whether the product Coca-Cola now contains any ingredient derived from Coca leaves that imparts any distinctive feature to it or that the use of Cola nuts adds any distinctive characteristic to it, the record is voluminous. A large number of chemists and other experts testified that the use of Coca leaves and Cola nuts, as now practiced by the Company, adds nothing appreciable, not even taste or aroma, to the product. Upon the points that large numbers of consumers of the product as well as druggists and other dealers have entertained the belief that as the name implies, the product contains essential elements derived from Coca leaves and Cola nuts, and that this belief still continues, the record contains the testimony of a large number of witnesses whose evidence is clear, explicit and satisfactory. As in the Syrup of Figs case the record shows that the pe-

titioner having built up its trade and created a demand for its product through such belief has even been compelled in self defense to do something to counteract to some extent the effect of this belief.

Stronger, however, than the testimony of witnesses is the claim made by petitioner that the term "Koke" is a pseudonym or nick name applied by the public exclusively to designate its product. It is even contended that the word "Koke" is an abbreviation of the word "Coca." To sustain this the petitioner has been compelled to admit that the word "Koke" came to designate its product because of the belief by the public that it contained the "deadly drug" cocaine. How futile, therefore, must be the attempt to remove the belief, purposely created by the petitioner, that Coca-Cola does contain either cocaine or some active principal of Coca leaves, so long as petitioner continues to market its product under the name Coca-Cola. Not only are the facts as found sustained by the record but the truth of none of these admits of serious controversy.

The conclusion of law drawn from these facts, in harmony with the conclusions of law drawn by this Court in the Syrup of Figs case, was the only one that a court of equity could properly have made.

We submit that the showing made by the petitioner is insufficient and that the writ of certiorari should be denied.

Respectfully submitted,

RICHARD E. SLOAN,
Solicitor for Respondents.

LITTLETON, LITTLETON & LITTLETON,
Of Counsel.

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JAMES D. MAHER,
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IN THE

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THE KOKE COMPANY OF TEXAS,
THE KOKE COMPANY OF OKLAHOMA,
THE KOKE COMPANY OF ARKANSAS,
Respondents.

PETITION FOR CERTIORARI TO THE CIRCUIT COURT OF APPEALS, NINTH CIRCUIT.

Supplemental Brief for Respondents.

RICHARD E. SLOAN,
Solicitor for Respondents.
LITTLETON, LITTLETON & LITTLETON,
C. L. PARKER,
Of Counsel.

LAW REPORTER PRINTING COMPANY, 518 FIFTH STREET NORTHWEST, WASHINGTON, D. C

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IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1918.

No.

THE COCA-COLA COMPANY,

Petitioner,

vs.

THE KOKE COMPANY OF AMERICA,
THE SOUTHERN KOKE COMPANY, LTD.,
THE KOKE COMPANY OF TEXAS,
THE KOKE COMPANY OF OKLAHOMA,
THE KOKE COMPANY OF ARKANSAS,

Respondents.

PETITION FOR CERTIORARI TO THE CIRCUIT COURT OF APPEALS, NINTH CIRCUIT.

Supplemental Brief for Respondents.

On page 11 of petitioner's brief, it is stated:

> "There are also pending certain other proceedings based upon alleged infringement of petitioner's trade-mark Coca-Cola and unfair competition against petitioner's business, as follows:"

Three proceedings are referred to, immediately after which (pages 11 and 12) it is stated:

> "There have also been a large number of proceedings brought by The Coca-Cola Company under the provisions of Act of Congress of February 20, 1905 (the trade-mark registration act)

in the United States Patent Office, all involving petitioner's trade-mark Coca-Cola. These proceedings are listed in the margin."

Final disposition has been made of Oppositions Nos. 1424, 1759, 1879, 1881, 1894, 1899, 1900, 1944, 1972, 1995, 2017, 2154, 2241, 2253, and 2286.

Certified copies of the final decisions in Oppositions Nos. 1759, 1879, 1881, 1894, 1900, 1944, 1972, 1995, 2017, 2154, 2241, 2253, and 2286, are hereto annexed.

Respectfully submitted.

RICHARD E. SLOAN,
Solicitor for Respondents.

LITTLETON, LITTLETON & LITTLETON,
C. L. PARKER,
Of Counsel.

UNITED STATES OF AMERICA,
DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the decision of the Examiner of Interferences, dated August 19, 1915, in the matter of Opposition Number 1759, The Coca-Cola Company *vs.* The Carbo-Cola Company, Trade-Mark for Non-alcoholic Carbonated Flavored Beverage and Syrup for Making the Same.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the City of Washington, this 29th day of May, in the year of our Lord one thousand nine hundred and nineteen and of the Independence of the United States of America the one hundred and forty-third.

[SEAL.]

R. F. WHITEHEAD,
Acting Commissioner of Patents.

UNITED STATES PATENT OFFICE.

Before the Examiner of Interferences.

In re Opposition No. 1759.

THE COCA-COLA COMPANY

vs.

THE CARBO-COLA COMPANY.

Please find below a communication from the Examiner in charge of Interferences in regard to the above-cited case.

Very respectfully,

THOMAS EWING,
Commissioner of Patents.

This case is before me for the consideration of two motions as follows:

1. A motion by the Carbo-Cola Company filed August 14, 1915, to quash or otherwise terminate the proceeding without a determination of the question of injury to the opposer.

2. A motion by the Coca-Cola Company filed August 16, 1915, for judgment upon the record.

According to the record as it now stands, the applicant, the Carbo-Cola Company, is given until August 18, 1915, within which to answer. It is freely admitted, however, on behalf of the applicant that it can not register, and reference is made to interference No. 38672 between John C. O'Dell and the Carbo-Cola Company in which a judgment was entered August 9, 1915, based upon a concession of the Carbo-Cola Company in favor of O'Dell. The right of appeal from that decision was waived and such decision is therefore final. It is contended that in view of that

judgment the question of the right of the Carbo-Cola Company to register herein is a moot question and the opposition should therefore be dismissed. On behalf of the Coca-Cola Company, it is urged that the Examiner of Interferences is without authority to dispose of this proceeding except by a judgment, and reference is made to the case of William A. Coombs Milling Co. *vs.* Dewey Bros. Milling Co., 171 O. G., 743; 1911 C. D., 129, wherein it was held that after an opposition had been filed the same would not be terminated except by a judgment either sustaining or dismissing the opposition. It is argued on behalf of the opposer that it was not a party to the interference referred to and therefore is not in any way bound by any judgment made therein. This contention is believed to be well founded. At the time the opposition was filed the Carbo-Cola Company was seeking registration. It can not now avoid the effects of a judgment sustaining the opposition on the ground that its right to register has already been determined in another case to which the opposer is not a party. On the other other hand, in view of the admission that it can not register, there seems to be no reason why the case may not be at once disposed of by a judgment in favor of the opposer.

The motion of the Carbo-Cola Company to dismiss is denied.

The motion of the Coca-Cola Company for judgment is granted, the opposition is sustained, and it is adjudged that the Carbo-Cola Company is not entitled to register the mark shown in its application for the goods therein specified.

Limit of appeal: September 20, 1915.

H. E. STAUFFER,
Examiner of Interferences.

UNITED STATES OF AMERICA,
DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of a stipulation filed January 24, 1916, and decision of the Examiner of Interferences, dated January 25, 1916, in the matter of Opposition Number 1879, The Coca-Cola Company *vs.* Celro-Kola Company, Trade-Mark for Syrup for Soda Water.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the city of Washington, this 29th day of May, in the year of our Lord one thousand nine hundred and nineteen and of the Independence of the United States of America the one hundred and forty-third.

[SEAL.] R. F. WHITEHEAD,
Acting Commissioner of Patents.

UNITED STATES PATENT OFFICE.

Before the Examiner of Interferences.

Opposition Number 1879.

THE COCA-COLA COMPANY

versus

CELRO-KOLA COMPANY.

To the Honorable Commissioner of Patents:

The parties hereto, by their attorneys of record, agree that, with the consent of the Examiner of Interferences, the following order shall be entered in the above-entitled opposition to wit:

Without passing upon the other issues involved in this opposition, the Opposition of The Coca-Cola Company is sustained on the ground that the script lettering

in which the Trade-Mark "Celro-Kola" is shown in the application of the Celro-Kola Company filed June 25, 1915, Serial Number 87,588, is an apparent simulation of the style of lettering used for the Trade-Mark Coca-Cola of The Coca-Cola Company.

No other issues are passed on by this order, and it is further without prejudice to the rights of the Celro-Kola Company to make further application to register its said trade-mark in any way not a simulation of the style of lettering of said Trade-Mark Coca-Cola, and is further without prejudice to the pending application of said Celro-Kola Company, Number 91,096, filed December 2, 1915.

THE COCA-COLA COMPANY,
By FRANK F. REED,
EDWARD S. ROGERS,
FRANCIS M. PHELPS,
By HAROLD HIRSCH,
Its Attorneys.

CELRO-KOLA COMPANY,
By T. J. GEISLER,
Its Attorney.

UNITED STATES PATENT OFFICE.

Before the Examiner of Interferences.

In re Opposition No. 1879.

THE COCA-COLA COMPANY

vs.

CELRO-KOLA COMPANY.

Please find below a communication from the Examiner in charge of Interferences in regard to the above-cited case.

Very respectfully,

THOMAS EWING,
Commissioner of Patents.

In accordance with the stipulation of the parties, the opposition is sustained in the terms of the same, as follows:

Without passing upon the other issues involved in this opposition, the opposition of the Coca-Cola Company is sustained on the ground that the script lettering in which the Trade-Mark "Celro-Kola" is shown in the application of the Celro-Kola Company, filed June 25, 1915, Serial No. 87,588, is an apparent simulation of the style of lettering used for the Trade-Mark Coca-Cola of The Coca-Cola Company.

No other issues are passed on by this order, and it is further without prejudice to the rights of the Celro-Kola Company to make further application to register its said trade-mark in any way not a simulation of the style of lettering of said Trade-Mark Coca-Cola, and is further, without prejudice to the pending application of said Celro-Kola Company, No. 91,096, filed December 2, 1915.

The action of the parties is regarded as a waiver of the right of appeal, and no time for appeal is therefore allowed.

H. E. STAUFFER,
Examiner of Interferences.

UNITED STATES OF AMERICA,
DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the decision of the Examiner of Interferences, dated December 14, 1915, in the matter of Opposition Number 1881, The Coca-Cola Company *vs.* Warrior Bottling Co., Trade-Mark for Carbonated Non-Alcoholic Beverages.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the city of Washington, this 29th day of May, in the year of our Lord one thousand nine hundred and nineteen and of the Independence of the United States of America the one hundred and forty-third.

[SEAL.] R. F. WHITEHEAD,
Acting Commissioner of Patents.

UNITED STATES PATENT OFFICE.

Before the Examiner of Interferences.

In re Opposition No. 1881.

THE COCA-COLA COMPANY

vs.

WARRIOR BOTTLING CO.

Please find below a communication from the Examiner in charge of Interferences in regard to the above-cited case.

Very respectfully,

THOMAS EWING,
Commissioner of Patents.

Whereas, the applicant, the Warrior Bottling Co., has failed to make any showing why judgment on the record should not be entered sustaining the notice of opposition, in view of its failure to file an answer, and whereas the time allowed for such action has expired, pursuant to the notice given November 10, 1915, the opposition is sustained, and judgment is hereby rendered to the effect that the Warrior Bottling Co. is not entitled to the

registration of the trade-mark for which it has made application.

Limit of appeal, January 14, 1916.

H. E. STAUFFER,
Examiner of Interferences.

UNITED STATES OF AMERICA,
DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the decision of the Examiner of Interferences, dated August 25, 1917, in the matter of Opposition Number 1894, The Coca-Cola Company *vs.* Tennessee Cola Company, Trade-Mark for Syrup for Making Soft Drinks.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the city of Washington, this 29th day of May, in the year of our Lord one thousand nine hundred and nineteen and of the Independence of the United States of America the one hundred and forty-third.

[SEAL.]

R. F. WHITEHEAD,
Acting Commissioner of Patents.

IN THE UNITED STATES PATENT OFFICE.

Opposition No. 1894.

THE COCA-COLA COMPANY

vs.

TENNESSEE COLA COMPANY.

Application No. 86,977, filed May 28, 1915, Published Sept. 7, 1915.

Syrup for Making Soft Drinks.

Messrs. Frank F. Reed and Edward S. Rogers and Mr. Francis M. Phelps for the Coca-Cola Company.

Messrs. Green, Webb & Tate and Mr. Joseph R. Edson for Tennessee Cola Company.

This is an opposition by The Coca-Cola Company to registration by the Tennessee Cola Company of a Trade-Mark for Syrup for Making Soft Drinks.

The mark sought to be registered is "Tenn-Cola," while the mark of the opposer is "Coca-Cola." The two marks are applied to the same class of goods.

The applicant has taken no testimony and accordingly has no established date of use of the mark shown in its application (Greene, Tweed & Co. *vs.* Manufacturers' Belt Hook Company, 137 O. G., 2221). The opposer is the owner of two certificates of registration (Nos. 22,406 and 47,189) issued on January 31, 1893, and October 31, 1905, respectively. Moreover, the testimony introduced on behalf of opposer shows that party's long-continued use of the mark on its goods and extensive advertising of said mark. Opposer's ownership and use of the registered mark "Coca-Cola" for many years past is well established.

The mark shown in the application for registration consists of the hyphenated word "Tenn-Cola," written in script of the same style as that employed in opposer's mark and with paraphs under the separate syllables of the word. Both marks are hyphenated words with the same number of letters in each half. Both end with "Cola." The word "Tenn-Cola" bears considerable resemblance to "Coca-Cola," and this natural resemblance is emphasized and increased by the manner in which the former is displayed. No doubt as to its similarity to the registered mark "Coca-Cola" can be entertained. While it is unnecessary here to consider the question of unfair competition, the applicant's imitation of the advertising methods of The Coca-Cola Company, as shown by the evidence produced, strengthens the conclusion that its mark is an intentional simulation of the well-known mark owned and used by opposer. The mark sought to be registered is so similar to opposer's mark as to be apt to cause confusion therewith and its registration must therefore be refused.

The opposition is sustained and it is adjudged that the Tennessee Cola Company, the applicant, is not entitled to register the mark for which it has made application.

Limit of appeal: September 14, 1917.

J. W. MILBURN,
Acting Examiner of Interferences.

August 25, 1917.

UNITED STATES OF AMERICA,
DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the decision of the Examiner of Interferences, dated April 24, 1916, in the matter of

Opposition Number 1900, the Coca-Cola Company *vs.* Citra-Cola Manufacturing and Bottling Company, Trade-Mark for Non-Alcoholic Beverage.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the city of Washington, this 29th day of May, in the year of our Lord one thousand nine hundred and nineteen and of the Independence of the United States of America the one hundred and forty-third.

[SEAL.] R. F. WHITEHEAD,
Acting Commissioner of Patents.

UNITED STATES PATENT OFFICE.

Before the Examiner of Interferences.

In re Opposition No. 1900.

THE COCA-COLA COMPANY

vs.

CITRA-COLA MANUFACTURING AND BOTTLING COMPANY.

Please find below a communication from the Examiner in charge of Interferences in regard to the above-cited case.

Very respectfully,

THOMAS EWING,
Commissioner of Patents.

Whereas, the Citra-Cola Manufacturing and Bottling Company, the applicant, has failed to make any showing why judgment on the record should not be entered sustaining the notice of opposition, in view of its failure to file an answer, and whereas the time allowed for such showing has expired, pursuant to the notice of March 20, 1916, the opposition is sustained and a judgment is

hereby rendered to the effect that the Citra-Cola Manufacturing and Bottling Company is not entitled to the registration of the trade-mark for which it has made application.

Limit of appeal: May 15, 1916.

H. E. STAUFFER,
Examiner of Interferences.

UNITED STATES OF AMERICA,
DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the decision of the Examiner of Interferences, dated August 30, 1916, in the matter of Opposition 1944, The Coca-Cola Company *vs.* Sola-Cola Company, Inc., Trade-Mark for Non-Alcoholic Soda Fountain Beverage and Syrup for Making the Same.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the city of Washington, this 29th day of May, in the year of our Lord one thousand nine hundred and nineteen and of the Independence of the United States of America the one hundred and forty-third.

[SEAL.]

R. F. WHITEHEAD,
Acting Commissioner of Patents.

IN THE UNITED STATES PATENT OFFICE.

Opposition No. 1944.

THE COCA-COLA COMPANY

vs.

SOLA-COLA COMPANY, INC.

Application No. 89,724, filed Oct. 7, 1915, Published Nov. 16, 1915.

Non-Alcoholic Soda Fountain Beverage and Syrup for Making the Same.

Messrs. Frank F. Reed and Edward S. Rogers and Mr. Francis M. Phelps for the Coca-Cola Company.

Messrs. H. B. Willson & Co. for Sola-Cola Company, Inc.

This is an opposition by The Coca-Cola Company to the registration by the Sola-Cola Company, Inc., of the mark "Sola-Cola," written in script, as a trade-mark for a beverage and a syrup for making the same.

Without reciting in detail the questions put in issue by the pleadings, it may be stated that the case presents only two questions for consideration, namely, (1) that of the identity of the marks, and (2) whether the mark of the applicant is substantially the corporate name of the opposer.

The opposer's mark is the expression "Coca-Cola," written in script with certain special flourishes. There is no question but that the opposer used this expression as a trade-mark for beverages, and syrups for making the same, long prior to any date of use claimed by the applicant. It is urged on behalf of the Sola-Cola Company, Inc., that the marks are unlike, and attention is directed to the fact that the first word of its mark

"Sola" is totally different from the first word "Coca" of the mark of the opposer. While this is true, taking the expression as a whole, there is not only a close similarity between the appearance of the two expressions, but also a close resemblance in the sound thereof. Applicant writes its mark in script, very closely simulating the well-known chirography of the opposer. The flourishes of the two marks are different, but these alone can not be regarded as differentiating the marks. While, of course, the mark of the applicant could be so pronounced as to be differentiated from that of the opposer, the expressions are so clearly alike that when pronounced normally there is serious danger of confusion. In this respect the case is quite similar to that of Lang *vs.* Green River Distilling Co., 148 O. G., 280, 33 App. D. C., 506, where it was held that "Green Ribbon" should not be registered over "Green River" for the same class of goods. The opposer's brief cites a long list of cases in support of its contention that these marks are alike. No attempt will be made to discuss these citations. In my judgment the mark which the applicant seeks to register is not sufficiently different from that of the opposer, either in appearance or sound, as to justify registration over the earlier mark. On the other hand, it is believed that confusion would be quite likely to occur, and for this reason the applicant should not be permitted to register.

Moreover, since the expression "Sola Cola" is so nearly like "Coca Cola" as to warrant the conclusion that confusion would arise, "Sola Cola" becomes in effect the essential part of the name of the opposer, and as such can not be registered for this reason also (Asbestone Co. *vs.* The Philip Carey Manufacturing Co., 200 O. G., 857, 41 App. D. C., 507; The Mansfield Tire & Rubber Company *vs.* Ford Motor Company, 222 O. G., 1056, not yet in App. D. C.; D. H. Burrell & Co. *vs.* Simplex Electric Heating Co., 225 O. G., 737, not yet in App. D. C.) As

stated by the court in the first mentioned case, it is the purpose of the statute to take from the realm of registration, names of individuals, firms and corporations, and no one is entitled to register such names for any purpose when objection is raised by the owner of the name.

The opposition is sustained, and it is adjudged that the Sola-Cola Company, Inc., is not entitled to register the mark shown in its application for the goods therein specified.

Limit of appeal: September 30, 1916.

H. E. STAUFFER,
Examiner of Interferences.

August 30, 1916.

UNITED STATES OF AMERICA,
DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the decision of the Examiner of Interferences, dated January 13, 1917, in the matter of Opposition Number 1972, The Coca-Cola Company *vs.* Virginia Beverage Corporation, Trade-Mark for Beverage.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the city of Washington, this 29th day of May, in the year of our Lord one thousand nine hundred and nineteen and of the Independence of the United States of America the one hundred and forty-third.

[SEAL.]

R. F. WHITEHEAD,
Acting Commissioner of Patents.

UNITED STATES PATENT OFFICE.

Before the Examiner of Interferences.

In re Opposition No. 1972.

THE COCA-COLA COMPANY

vs.

VIRGINIA BEVERAGE CORPORATION.

Please find below a communication from the Examiner in charge of Interferences in regard to the above-cited case.

Very respectfully,

THOMAS EWING,
Commissioner of Patents.

Whereas, the Virginia Beverage Corporation, the applicant, has failed to make any showing why judgment on the record should not be entered sustaining the notice of opposition, in view of its failure to file an answer, and whereas the time allowed for such showing has expired, pursuant to the notice of December 9, 1916, the opposition is sustained, and judgment is hereby rendered to the effect that the Virginia Beverage Corporation is not entitled to register the mark for which it has made application.

Limit of appeal: February 2, 1917.

H. E. STAUFFER,
Examiner of Interferences.

UNITED STATES OF AMERICA,
DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the decision of the Examiner

of Interferences, dated October 18, 1916, in the matter of Opposition Number 1995, The Coca-Cola Company *vs.* Kelly Manufacturing Company, Trade-Mark for a Non-Alcoholic Beverage Sold as a Soft Drink and Syrup for Making the Same.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the city of Washington, this 29th day of May, in the year of our Lord one thousand nine hundred and nineteen and of the Independence of the United States of America the one hundred and forty-third.

[SEAL.] R. F. WHITEHEAD,
Acting Commissioner of Patents.

IN THE UNITED STATES PATENT OFFICE.

Opposition No. 1995.

THE COCA-COLA COMPANY

vs.

KELLY MANUFACTURING COMPANY.

Application No. 91,224, filed Dec. 6, 1915, Published Jan. 18, 1916.

A Non-Alcoholic Beverage Sold as a Soft Drink and Syrup for Making the Same.

Mr. Harold Hirsch, Messrs. Frank F. Reed and Edward S. Rogers, and Mr. Francis M. Phelps for The Coca-Cola Company.

Messrs. H. B. Willson & Co. for Kelly Manufacturing Company.

This is an opposition by The Coca-Cola Company against the registration of the mark for which applica-

tion has been filed by the Kelly Manufacturing Company.

The only question to be considered in this case is the similarity of the marks, for the goods are the same and the opposer has prior use of its mark.

The prominent and important feature of the applicant's mark is the word "Kel-Kola," written in script with a paraph underneath the word. There are other minor features, but these are not of any particular importance.

The mark of the opposer is well known and consists of the words "Coca-Cola" in script type. The last two syllables of both marks are identical, and the style of type is so nearly similar that the difference between the manner in which the syllable "ola" is written in the two words can hardly be distinguished. The marks as a whole are regarded as similar.

The opposition is sustained, and it is adjudged that the Kelly Manufacturing Company, the applicant, is not entitled to register the mark shown in its application.

Limit of appeal: November 18, 1916.

H. E. STAUFFER,
Examiner of Interferences.

October 18, 1916.

UNITED STATES OF AMERICA,
DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the decision of the Examiner of Interferences, dated June 9, 1916, in the matter of Opposition Number 2017, The Coca-Cola Company *vs.* William W. Power, Trade-Mark for Soft Drinks and Syrup for Making the Same.

In testimony whereof I have hereunto set my hand

and caused the seal of the Patent Office to be affixed at the city of Washington, this 29th day of May, in the year of our Lord one thousand nine hundred and nineteen and of the Independence of the United States of America the one hundred and forty-third.

[SEAL.] R. F. WHITEHEAD,
Acting Commissioner of Patents.

UNITED STATES PATENT OFFICE.

Before the Examiner of Interferences.

In re Opposition No. 2017.

THE COCA-COLA COMPANY

vs.

POWER.

Please find below a communication from the Examiner in charge of Interferences in regard to the above-cited case.

Very respectfully,

THOMAS EWING,
Commissioner of Patents.

Whereas, William W. Power, the applicant, has failed to make any showing why judgment on the record should not be entered sustaining the notice of opposition, in view of his failure to file an answer, and whereas the time allowed for such showing has expired, pursuant to the notice of May 5, 1916, the opposition is sustained, and a judgment is rendered to the effect that William W. Powers is not entitled to the registration of the trade-mark for which he has made application.

Limit of appeal: June 29, 1916.

H. E. STAUFFER,
Examiner of Interferences.

UNITED STATES OF AMERICA,
DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the decision of the Examiner of Interferences, dated December 1, 1916, in the matter of Opposition Number 2154, The Coca-Cola Company *vs.* National Carbonating Syrup Company, Trade-Mark for Non-Alcoholic Carbonated Soft Drink, etc.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the city of Washington, this 29th day of May, in the year of our Lord one thousand nine hundred and nineteen and of the Independence of the United States of America the one hundred and forty-third.

[SEAL.] R. F. WHITEHEAD,
Acting Commissioner of Patents.

UNITED STATES PATENT OFFICE.

Before the Examiner of Interferences.

In re Opposition No. 2154.
THE COCA-COLA COMPANY
vs.
NATIONAL CARBONATING SYRUP COMPANY.

Please find below a communication from the Examiner in charge of Interferences in regard to the above-cited case.

Very respectfully,

THOMAS EWING,
Commissioner of Patents.

Whereas, the National Carbonating Syrup Company, the applicant, has failed to make any showing why judgment on the record should not be entered sustaining the notice of opposition, in view of its failure to file an answer, and whereas the time allowed for such showing has expired, pursuant to the notice of October 25, 1916, the opposition is sustained and judgment is hereby rendered to the effect that the National Carbonating Syrup Company is not entitled to register the trade-mark for which it has made application.

Limit of appeal: December 21, 1916.

H. E. STAUFFER,
Examiner of Interferences.

UNITED STATES OF AMERICA,
DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the decision of the Examiner of Interferences, dated March 24, 1917, in the matter of Opposition Number 2241, The Coca-Cola Company vs. G. A. Miller, Trade-Mark for Soda Fountain Syrup.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the city of Washington, this 29th day of May, in the year of our Lord one thousand nine hundred and nineteen and of the Independence of the United States of America the one hundred and forty-third.

[SEAL.]

R. F. WHITEHEAD,
Acting Commissioner of Patents.

UNITED STATES PATENT OFFICE.

Before the Examiner of Interferences.

In re Opposition No. 2241.

THE COCA-COLA COMPANY

vs.

MILLER.

Please find below a communication from the Examiner in charge of Interferences in regard to the above-cited case.

Very respectfully,

THOMAS EWING,
Commissioner of Patents.

Whereas, the applicant, Miller, has failed to make any showing why judgment on the record should not be entered sustaining the notice of opposition, in view of his failure to file an answer, and whereas the time allowed for such action has expired, pursuant to the notice given February 19, 1917, the opposition is sustained, and judgment is hereby rendered to the effect that G. A. Miller is not entitled to the registration of the trade-mark for which he has made application.

Limit of appeal: April 13, 1917.

H. E. STAUFFER,
Examiner of Interferences.

UNITED STATES OF AMERICA,
DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the decision of the Examiner

of Interferences, dated June 26, 1917, in the matter of Opposition Number 2253, The Coca-Cola Company *vs.* The Quaker-Kola Company, Trade-Mark for a Soft Drink.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the city of Washington, this 29th day of May, in the year of our Lord one thousand nine hundred and nineteen and of the Independence of the United States of America the one hundred and forty-third.

[SEAL.] R. F. WHITEHEAD,
Acting Commissioner of Patents.

UNITED STATES PATENT OFFICE.

Before the Examiner of Interferences.

In re Opposition No. 2253.

THE COCA-COLA COMPANY

vs.

THE QUAKER KOLA COMPANY.

Please find below a communication from the Examiner in charge of Interferences in regard to the above-cited case.

Very respectfully,

THOMAS EWING,
Commissioner of Patents.

Whereas, The Quaker-Kola Company, the applicant, has failed to make any showing why judgment on the record should not be entered sustaining the notice of opposition, in view of its failure to file an answer, and whereas the time allowed for such showing has expired, pursuant to the notice of May 21, 1917, the opposition

is sustained, and a judgment is hereby rendered to the effect that The Quaker-Kola Company is not entitled to the registration of the trade-mark for which it has made application.

Limit of appeal: July 16, 1917.

H. E. STAUFFER,
Examiner of Interferences.

UNITED STATES OF AMERICA,
DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the decision of the Examiner of Interferences, dated August 3, 1917, in the matter of Opposition Number 2286, The Coca-Cola Company *vs.* Ray Cave, Trade-Mark for Soda Fountain Syrup.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the city of Washington, this 29th day of May, in the year of our Lord one thousand nine hundred and nineteen and of the Independence of the United States of America the one hundred and forty-third.

[SEAL.]

R. F. WHITEHEAD,
Acting Commissioner of Patents.

UNITED STATES PATENT OFFICE.

Before the Examiner of Interferences.

In re Opposition No. 2286.

THE COCA-COLA COMPANY

vs.

CAVE.

Please find below a communication from the Examiner in charge of Interferences in regard to the above-cited case.

Very respectfully,

THOMAS EWING,
Commissioner of Patents.

Whereas, the applicant, Cave, has failed to make any showing why judgment on the record should not be entered sustaining the notice of opposition, in view of his failure to file an answer, and whereas the time allowed for such action has expired, pursuant to the notice given July 16, 1917, the opposition is sustained, and judgment is hereby rendered to the effect that Ray Cave is not entitled to the registration of the trade-mark for which he has made application.

Limit of appeal: August 23, 1917.

H. E. STAUFFER,
Examiner of Interferences.